

Remarks

Originally filed claims 12, 19, 28, 34, 36, 37, and 38 and new claims 42-71 will be pending upon entry of this amendment. Claims 1-11 and 13-18, 20-27, 29-33, 35, and 39-41 have been canceled in favor of new claims 42-71 in order to more particularly point out and distinctly claim the subject matter Applicants regard as the invention. New claims 42-71 find support in the claims as originally filed and throughout the specification.

Specifically, support for new claims can be found, for example, in the originally filed claims; at page 11, lines 29-36; at page 56, lines 14-15 and lines 27-28; at page 95, lines 35-37; at page 97, line 32; at page 98, lines 12-13; at page 118, lines 1-3 and lines 13-14; at page 119, lines 24-27; at page 120, lines 1-2, line 11, and line 36; and at page 129, lines 14-18. Thus, no new matter has been introduced by way of amendment.

I. The Restriction Requirement.

In the Official Action of May 30, 2001 (Paper No. 11) the Examiner required an election under 35 U.S.C. § 121. The Examiner contends that the inventions are distinct, each from the other.

In order to be fully responsive, Applicants hereby provisionally elect, with traverse, the subject matter of Group I (claims 1-11 and 15-17), drawn to a method of treating injury or degeneration of photoreceptors, by the administration of VEGF-2. Applicants point out that original claims 1-11 and 13-18, 20-27, 29-33, 35, and 39-41 have been canceled and that new claims 42-71 are directed to subject matter falling within the ambit of Group I as cast by the Examiner.

Applicants reserve the right to file one or more divisional applications directed to non-elected inventions should the additional restriction requirement be made final. In such a

case, Applicants retain the right to petition from the additional restriction requirement under 37 C.F.R. § 1.144.

With respect to the Examiner's division of the invention into eight (8) groups and the reasons stated therefor, Applicants respectfully traverse. Even assuming, *arguendo*, that Groups I-VIII represented distinct or independent inventions, Applicants submit that to search and examine the subject matter of all the Groups together would not be a serious burden on the Examiner. For example, a search for publications disclosing methods of treating injury or degeneration of photoreceptors will disclose a variety of methods, thereby making it a simple matter for the Examiner to search and examine methods of treating injury or degeneration of photoreceptors either by the administration of VEGF-2 or by cell therapy or gene therapy.

The M.P.E.P. § 803 (Seventh Edition, Rev. July 1998) states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Thus, in view of M.P.E.P. § 803, the claims of all of Groups I-VIII should be searched and examined in the subject application.

Accordingly, Applicants respectfully request that the Restriction Requirement Under 35 U.S.C. § 121 be withdrawn and the instant claims be examined in one application.

II. The Species Restriction

The Examiner has further required election of a "species" within the provisionally elected group for the "second agent," corresponding to claim 16. Applicants have canceled claim 16, thereby obviating the species election. Applicants reserve the right to file one or more divisional applications directed to non-elected subject matter. Thus, Applicants

respectfully request that the requirement for election of species be withdrawn so the restricted subject matter can be examined together.

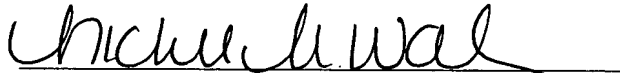
III. Conclusion

Applicants respectfully request that the above-made amendments and remarks be entered and made of record in the file history of the instant application. Applicants believe that this application is in condition for substantive examination. If in the opinion of the Examiner, a telephone conference would expedite prosecution, the undersigned can be reached at the telephone number indicated below.

If there are any fees due in connection with the filing of this paper, please charge the fees to Deposit Account No. 08-3425.

Respectfully submitted,

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Enclosures
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